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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

April 22, 1996

LINDA S. WALKER,)	
SUSAN SUTHERLAND,)	
JURIAN VREEBURG,)	
HANNELORE HAINKE,)	
HELENA FARQUHARSON,)	
CAROLYN HARMAR, AND)	
CAROL VIEUX,)	
Complainants,)	
)	
v.)	8 U.S.C. §1324b Proceeding
)	OCAHO Case No. 93B00004
UNITED AIRLINES, INC.,)	
Respondent.)	
_____)	

ORDER OF DISMISSAL

MARVIN H. MORSE, Administrative Law Judge

Appearances: *Raymond C. Fay, Esq., Christopher G. Mackaronis, Esq., and Susan J. King, Esq.*, for Complainants
Robert A. Siegel, Esq., Michael A. Curley, Esq., and Kenneth A. Goldberg, Esq., for Respondent

By Amended Decision and Order in this docket dated September 13, 1994, amending an order dated August 26, 1994, Administrative Law Judge Robert B. Schneider granted in part and denied in part Respondent's Motion for Summary Decision. *Walker v. United Air Lines, Inc.*, Amended Decision and Order Granting in Part and Denying in Part Respondent's Motion for Summary Decision and Granting in Part and Denying in Part Complainants' Motion for Joinder with the Complainants in *Lardy v. United Air Lines*, OCAHO Case No. 92B00085, 4 OCAHO 686 (1994) (Amended Decision and Order). As to

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those portions of the Complaint that survived the ruling on summary decision, Judge Schneider granted Complainants' Motion for Joinder with the complainants in *Lardy v. United Air Lines, Inc.*, OCAHO Case No. 92B00085. On February 7, 1995, the Chief Administrative Hearing Officer reassigned both this case and the *Lardy* to me.

On April 12, 1995, I issued an Order of Inquiry which directed the parties to file explanatory pleadings providing a persuasive reason why this case should not be dismissed based on the fact that what remains of the charges in the Complaint had been joined with the *Lardy* action.

On April 28, 1995, Respondent filed its response to the Order of Inquiry which supported dismissal of this action with prejudice.

On May 1, 1995, Complainants filed their response to the Order of Inquiry. Complainants assert that it was not appropriate to dismiss this action because two of them, Linda S. Walker (Walker) and Carolyn Harmar (Harmar), had only been allowed to join *Lardy* for purposes of pursuing their retaliation claims, and that could not piggyback their claims of citizenship discrimination upon Joan A. Lardy's (Lardy) timely filed charge of discrimination. Complainants urge that Walker and Harmar be permitted to join *Lardy* for purposes of pursuing their citizenship discrimination claims in the event a Motion to Intervene in *Lardy* were granted. Complainants assert that dismissal, if any, should be without prejudice so as not to impair the rights of those asserting claims in *Lardy* and other related actions.

On May 1, 1995, Complainants also filed a Motion to Supplement the Record to include the Equal Employment Opportunity Commission charge filed by Walker (the "Paris" EEOC Charge). Complainants assert that this charge was referred to in Complainants' Response to Court Interrogatories and in the Amended Decision and Order, 4 OCAHO 686 (1994).

On May 5, 1995, Respondent filed its Statement in Opposition to Complainant's Motion to Supplement the Record. Respondent asserts that the "Paris" EEOC Charge is irrelevant to the dismissal of Walker's citizenship discrimination claim as the Complainants never relied on that charge on opposing such dismissal; the "Paris" EEOC Charge was not relied on in dismissing the citizenship status discrimination claim. Finally, Respondent argues that the Complainants are attempting to augment the record eight months after the adverse ruling on the discrimination claim and that no

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legal authority is provided to permit this. Specifically, Respondent stated that "it is obvious that a party cannot change the record after an adverse ruling and then attack that ruling on appeal based on evidence that the party itself elected not to make part of the proceedings that resulted in the challenged decision." Statement in Opposition at 3.

On March 8, 1996, I issued in *Lardy* an Order Denying Motion to Intervene which rejected the efforts to permit 21 flight attendants to join that action. 6 OCAHO 843 (1996). Complainants here have urged that I should not dismiss *Walker* because if the *Lardy* Motion to Intervene were granted, Walker and Harmar should be permitted to piggyback on Lardy's timely filed discrimination charge and assert their citizenship discrimination claims. As the Motion to Intervene has been denied, that argument is now moot.

Complainants' Motion to Supplement the Record is without merit. Judge Schneider appears to have mentioned the "Paris" EEOC Charge in a footnote merely to complete the procedural background. The "Paris" EEOC Charge was not relied on by Complainants in defending against the Motion for Summary Decision and, was not mentioned in the ruling on the motion. I find a lack of good cause for supplementing the record with additional evidence which was not relied on by either the Complainants or the Administrative Law Judge in the summary decision ruling. It is superfluous and irrelevant to the issues before me. Accordingly, Complainants' Motion to Supplement the Record is denied.

Upon review of the record, it is clear that the September 13, 1994 Amended Decision and Order, 4 OCAHO 686, resolved all issues in contention in this matter. Summary decision was granted in Respondent's favor as to the citizenship discrimination claims of Walker and Harmer, and joinder with *Lardy* was granted as to all other remaining claims.

Complainants assert that the Complaint should not be dismissed with prejudice because this would affect their ability to assert their claims in other actions. I am not persuaded by this argument. Whatever cause of action the *Walker* Complainants may be able to assert in another action is independent of the result here. Any cognizable §1324b claims remaining after the September 13, 1994 Amended Decision and Order were joined into the *Lardy* action. As

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no cognizable claims remain in contention in *Walker*; I dismiss this case with prejudice.

SO ORDERED.

Dated and entered this 22d day of April, 1996.

MARVIN H. MORSE
Administrative Law Judge